

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MILKO VILOMAR BORGE,

Petitioner,

-v-

9:22-CV-1072

D. CHRISTENSEN,

Respondent.

APPEARANCES:

OF COUNSEL:

MILKO VILOMAR BORGE

Petitioner, Pro Se

22626-069

Loretto FCI

Inmate Mail/Parcels

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Northern District of New York

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Syracuse, NY 13261

EMER M. STACK, ESQ.

Ass't United States Attorney

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On October 17, 2022, *pro se* petitioner Milko Vilomar Borge (“petitioner”) filed this action seeking habeas corpus relief. Dkt. No. 1. After an initial

review of the petition, the warden of the facility where petitioner is being held in custody (“respondent”) was ordered to respond, Dkt. No. 4, and timely opposed the petition, Dkt. No. 7. Petitioner did not file a reply. Dkt. No. 9.

On December 5, 2023, U.S. Magistrate Judge Andrew T. Baxter advised by Report & Recommendation (“R&R”) that the petition should be denied and dismissed with partial leave to amend. Dkt. No. 10.

Petitioner has not filed objections, and the time in which to do so has expired. *See* Dkt. No. 10. Thus, upon review for clear error, the R&R is accepted and will be adopted. *See* FED. R. CIV. P. 72(b).

Therefore, it is

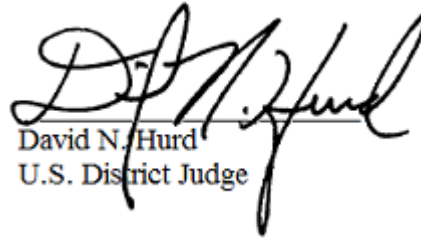
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. The petition is DISMISSED for lack of subject matter jurisdiction;
3. Petitioner shall have forty-five days in which to file an amended pleading to state possible claims for damages “arising from the conditions of confinement/medical care at FCI Ray Brook pursuant to *Bivens*”;
4. Any amended pleading must conform with the instructions set forth in Judge Baxter’s December 5, 2023 Report & Recommendation;
5. If plaintiff timely files an amended pleading, the file shall be returned to Judge Baxter for further review; and

6. If plaintiff does not timely file an amended pleading, the Clerk is directed to enter a judgment accordingly and close this action without further Order of this Court.

IT IS SO ORDERED.

Dated: December 26, 2023
Utica, New York.



David N. Hurd
U.S. District Judge